Communiqué

JULY, 2004

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PRESIDENT'S REPORT

Welcome BMO, or "The Protocol" and Why You Should Use It

William Johnston
President

In my neck of the woods (the City of Brandon and the surrounding rural region), most of the active conveyancers, myself included, have been making extensive use of the Western Law Societies Conveyancing Protocol for the past few years.

This is not rocket science. Use of the Protocol will usually be appropriate whenever:

1. the transaction involves the transfer or refinancing of a "used residential premises" (as

opposed to new construction);

2. the purchase is a "cash transaction"; or

3. the purchaser's financial institution has accepted the Protocol.

In rural Manitoba, the last point has generally meant a local credit union or caisse populaire is involved as the purchaser's lender. It has also meant that we, as a profession, have taken an active role in assisting the various credit unions with an administrative set-up that facilitates use of the purchaser's mortgage money on closing.

By way of example, the largest credit union in our region, Westoba Credit Union Ltd., has set up such an administrative system. Once a mortgage loan is approved, the funds are physically transferred into a "suspense account", and the mortgage instructions are sent to the purchaser's solicitor, with a cheque attached. The cheque is usually accompanied by a note requesting the solicitor's office to call a particular telephone number to "activate" the cheque when it is appropriate. On receiving notification, the credit union transfers the funds from the suspense account to the active member's account, and interest begins to accrue.

Once you have completed one Protocol closing, you will sit back and wonder why you ever had any misgivings about the system. It is slick, efficient, practical, logical, and most importantly, safe. It is so safe that if a solicitor has complied with the requirements of the Protocol and an irreparable problem arises (most obviously an intervening registration), then our insurance program will appropriately compensate the parties affected, without a deductible contribution from the conveyancer, or any effect on the conveyancer's insurance record.

The Protocol is a good thing!

Clients love it, because their transaction is substantially completed on the closing date that they contemplated in their offer to purchase. Complicated explanations about how mortgage money will be drawn down after registrations and about interest payable to the vendor are eliminated. The purchasers' interest adjustment payment at the bank is for a period of time that they understand.

Financial institutions love the Protocol because it usually avoids the nuisance of bridge financing. There is no administrative responsibility or cost associated with inspecting documents at the interim report stage. Also, having received the short-form Solicitor's Opinion in a format they now recognize, lenders simply diarize their matter approximately one month, awaiting the solicitor's final report on title. All of the intervening headaches and concerns are covered for them, and their members/customers are happy because the solicitor has facilitated the timely receipt and disbursement of the lender's funding.

As well, the solicitors who make extensive use of the Protocol have found that their paralegals, assistants and administrative staff have quickly become fans of the system. Funds are received and paid out on the closing dates. This eliminates dealing with angry clients who are calling wondering where their money is and who do not understand why the funds must sit in the firm's pooled trust account.

In light of all the foregoing, I am at a loss to understand the reluctance of too many within our profession to modify their conveyancing practices so as to improve efficiency and generally get

with the times. The two primary arguments that I hear against using the Protocol are:

1. In these competitive times, when we are receiving fewer legal fees for our services, why would we modify our process to do more work and add responsibility?

2. Our volume of activity is so significant that we don't have an opportunity to pause and consider what is necessary to modify our system for making use of the Protocol.

With respect, both points are nonsense!

A Protocol closing is in fact less work than a non-Protocol closing. There is one additional document to prepare, the Limited Power of Attorney that facilitates amendment or substantial modification of documents rejected by Land Titles, but even this has been significantly improved and streamlined by the continuing active participation of our Law Society's Insurance Department. The Solicitor's Opinion in the Protocol is not an additional document, but rather a simplified substitution for the old interim report on title. In practical terms, when I meet with my clients to review the set of conveyance documents, if it is a contemplated Protocol closing, everything is signed and in place at the conclusion of that meeting. I return the file to my assistant, with the specific instructions that the documents have all been executed and all proceeds can be disbursed on the closing date. If we are acting for a purchaser, the signed Solicitor's Opinion is faxed to the financial institution on the closing date, at the time the cheque is deposited into our firm's trust account. A cheque requisition is provided to our firm's accounting department requesting disbursement of the client's cash to mortgage, together with the full mortgage proceeds, in order to pay the balance due to close referred to in the vendor's statement of adjustments. If we are acting for a vendor, the file is diarized for the closing date, with my assistant knowing that the vendor's mortgage (if any), any Manitoba Hydro Insulation Loan Contract or other unusual matter raised in the Declaration as to Possession, the City or Municipal taxes (if any) are to be paid, and the City's final water account and payment of any appropriate real estate commissions are all to be disbursed once the funds are received. The only funds remaining in our trust account would be the holdback of legal fees and disbursements to satisfy our invoice once the final portions of the transactions have been completed, approximately one month after closing.

This is not a "quantum leap" from our historical method of closing transactions. It is an efficient modernization of our existing practise. Many of these modernizations are matters that we should be turning our minds to in any event.

This leads to the question: why is the Protocol important? Implicit in the original proposition that the Protocol is appropriate only for "used residential premises", is the necessary consideration of the issue of Building Location Certificates and/or title insurance currently required by non-Protocol lenders. Even in the circumstances of the Protocol, the purchaser's solicitor is under a duty to make appropriate inquiry to ascertain any existing survey and zoning information that may be available and to explain the benefits of a new BLC to the client. Where a non-Protocol lender is involved, the current realities of the marketplace are that the lender will require either:

1. a new Building Location Certificate (in the Brandon marketplace, $360.00 + G.S.T.) and Zoning Memorandum (currently $60.00) from the local planning authority; or

2. a policy of title insurance (current market cost approximately $250.00 for the lender's coverage/or $320.00 for purchaser and lender).

Under the Protocol, where the duties to inquire and explain have been complied with and the property in question is a used residential premises, the Solicitor's Opinion can satisfy financial institutions that they will be compensated for loss caused by unknown survey defects, without cost to the borrower. Some parties have criticized the Law Society for being involved in this project, suggesting it constitutes "turf protection" for lawyers and is outside of the Society's mandate that the public be protected. With respect, I disagree with this opinion. This is an important initiative to enhance and facilitate lawyers' representation of the public through professional services that are adequately and appropriately regulated. As an added advantage, the Protocol serves to standardize conveyancing practises across Western Canada, since it is a joint initiative of the four western law societies.

Our Provincial Government is also supportive of the initiative because it maintains the integrity of the Torrens land holding system. Most importantly to our Finance Minister, it protects the revenue source of our Provincial coffers through the continued facilitation of registrations and therefore, the collection of appropriate land transfer tax. Other jurisdictions, particularly those where private title insurers have gained a strong foothold, have suffered a significant revenue hit.

While I acknowledge that it is administratively cumbersome for lawyers to close some transactions on the basis of Protocol and others (where non-Protocol lenders are involved) in the traditional method, I am happy to say that we are making progress and significant inroads in signing up lenders for this initiative.

I am very pleased to report that in June 2004 the Bank of Montreal became the first of the five Canadian Chartered Banks to come on board with the Society's Conveyancing Protocol and we are certain that this will ultimately trigger a reconsideration by the other banks of their position. As a practitioner concerned with my clients' best interests, I fully intend to encourage purchaser-clients to consider the Bank of Montreal, their local credit union and any other Protocol lender first, on any opportunity that may arise. This is consistent with the Law Society's mandate "of a public well served" by the legal profession.

Thank you to BMO, and welcome aboard. Below is a list of lenders that are currently accepting Protocol. They deserve our referrals and our administrative assistance and co-operation.

Bank of Montreal
Manitoba Credit Unions
Investors Group
London Life
Great West Life
Citi Financial
Wawanesa
Canadian Western Bank
Canadian Western Trust
Maple Trust
Intel Financial Group
Bayfield Mortgage Corporation
Bank West

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Benchers' Meeting Highlights

Allan Fineblit, Q.C.
Chief Executive Officer

The Benchers of the Law Society of Alberta begin the minutes of each of their meetings by announcing that it was the 483rd (or whatever) meeting of that Law Society. Some day I'll do a count but I suspect that since we are 127 years old, we must be pushing a thousand meetings. I do know that on June 24, 2004 the 127th annual meeting of the Law Society of Manitoba took place. Audited statements were approved, the annual report was received, minutes were confirmed, and auditors were appointed.

That same afternoon the Benchers of the Law Society of Manitoba met. President **Bill Johnston** presented his first report as president and described a recent meeting of the Western Canadian Law Societies hosted by the Law Society of Alberta in conjunction with their Benchers meeting.

The Benchers approved in final form rule amendments simplifying the procedural rules for reinstatement after disbarment or resignation.

Out-going Equity Chair, **Bill Gange**, asked Benchers to consider a request from the Manitoba Bar Association's Equality Issues Subsection to cooperate with the Manitoba Bar Association to ensure that there was at least one female lawyer on the Judicial Appointments Committee. Benchers noted that the MBA itself had not yet considered the issue and the consensus was that if the MBA ultimately approved the idea, the Law Society's Equity Committee (now chaired by **Jeff Hirsch**) should consider the issue at that time.

The Benchers again talked about what to do with old disciplinary records for relatively minor matters. Consensus was hard to come by and in the end the matter was referred to the Practice and Ethics Committee to have a fresh look at.

Our policy of insurance excludes coverage for lawyers acting for members of their own law firm or for the firm itself. Benchers discussed whether the policy should be amended to cover either or both. They decided that it was appropriate to provide coverage for members who act for individual lawyers in the firm but not for the firm itself. The Benchers voted to amend the policy accordingly.

The Benchers voted to appoint **Tim Killeen** as the Law Society of Manitoba representative on the Federation of Law Societies' council for a two year term to replace Lori Spivak who will become Federation President in November. They also voted to appoint **Bill Gange** as the Law Society representative to the Board of our reciprocal insurer, CLIA, effective October, 2004 to replace **Doug Abra** who has represented Manitoba on this Board since 1990.

Lastly, the Benchers received the detailed financial statements for the 2003/04 fiscal year end. While low investment income and several unbudgeted expenditures presented significant challenges, expenditure reductions enabled us to meet our financial targets in all funds (Insurance, Reimbursement, Education and General).

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Allan's Odds and Ends

Allan Fineblit, Q.C.
Chief Executive Officer

1. There are still a few excellent students about to start the CPLED course (the new prairie bar admission course) who don't have articling positions. Let me know if you'd like to get their resumes.

2. **Dr. Claudia Wright**, Dean of Social Sciences at the University of Winnipeg and a former Lay Bencher, has been appointed as the Law Society's Complaints Commissioner, replacing Patti Sullivan who recently completed a three year term in the position. The Complaints Commissioner operates independently of the Law Society and investigates complaints from the public in circumstances where their complaint to the Law Society has been dismissed without investigation.

3. Condolences to my good pal, Darrel Pink, CEO of the Nova Scotia Barristers' Society, and his family on the loss of Darrel's dad, Irving Pink, O.C., Q.C., D.C.L.

4. On June 17, 2004 fifty-seven students were called to the Bar (32 women and 25 men).

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Equity Ombudsperson:

Childcare and Parental Leave for Canada's Changing Legal Profession

Brenlee Carrington Trepel
Equity Ombudsperson

Childcare and parental leave are currently on the agenda of Canada's legal profession.

Quebec has implemented a parental leave compensation scheme for self-employed lawyers and Nova Scotia is seriously considering the concept.

According to a front page story in the February 27, 2004 edition of the Lawyers Weekly: "As of January 2005, the Barreau du Quebec will provide a parental leave financial assistance program designed to cover the costs of running a practice, up to a maximum of $1,500. The Barreau will cover expenses for women on maternity leaves for up to three months. Also eligible are mothers or fathers who take a one-month parental or adoption leave. About 80 women and 20 men are expected to take advantage of the program in its first year."

"The program is to be self-financed. To cover costs, the Barreau this spring will add $30 to the existing annual dues of $1200 now paid by the law society's 20,000 members."

The program addresses only the business costs of running a law practice and is not intended as an income replacement program.

Growing Presence of Women Needs to Be Reflected

An economic feasibility study was done which, notes the Lawyers Weekly article, concluded that "The Barreau must adapt its organization to reflect the growing presence of women in the professional world."

Nova Scotia Barristers' Society Equity Officer Marie Paturel told me that the Gender Equality Committee is recommending a Maternity Leave Program for the Nova Scotia Barristers' Society. The proposal will be discussed at this month's Council meeting.

In its report, the NSBS Gender Equality Committee stated that although there is an increase in the participation of women in the legal profession, more women than men are leaving the private practice of law, not only in Nova Scotia, but throughout Canada.

The same report referred to a 1999 NSBS survey which indicated that female lawyers experienced pressure to return to work during their maternity leave, and difficulty in obtaining flexible hours.

The NSBS report also quotes Claude Leduc, past president of the Barreau du Quebec, who says he supported the program "to redress an unfairness for lawyers who represent 48 percent of the Bar (a number that will surpass 60 percent in five to seven years), and to stop the exodus of lawyers who have children, from private practice."

How The NSBS Program Would Work

The NSBS Gender Equality Committee recommends that: "The Society establish a maternity leave program as a five-year pilot project beginning July 1, 2005. The program would provide a $6,000 financial payment ($2000/month) to eligible female members to offset the short-term financial costs of having a child (including adoption)."

"The program be available to practicing insured female self-employed (as such, they would not be eligible for Employment Insurance) lawyers with no access to other parental/maternity/adoption financial benefit programs or internal firm programs which allow continued financial payments while on leave." "The program be funded with a $30.24 increase in the membership fee for all members of the Society (practicing/non-practicing, insured and non/insured), starting July 1, 2005. The GEC believes that all members, whether practicing or non-practicing, should support the program."

A Manitoba Lawyer's Suggestion for Childcare

In a previous edition of Communiqué, I wrote about the fact that more than 20 Toronto law firms are currently using an emergency and non-emergency childcare service provider and wondered whether the trend would soon make its way to Winnipeg.

According to an article in Law Times from December, 2003, the service sets out to serve as a sort of insurance policy that ensures children of professional working parents are taken care of if their nanny or babysitter isn't available, or during school PD days, teachers' strikes, and other emergencies.

One Winnipeg lawyer and father responded to the article with an excellent and creative suggestion which I promised to pass on to you. The lawyer wrote to me and said: "Your article got me thinking that with the cost of housing so reasonable in our city, it would make sense for larger offices or a group of offices (perhaps organized through the local bar association) to purchase or lease a home in a neighborhood setting where childcare could be offered.

Not only would the service make the lives of many working parents easier but if the firms paid and adjusted the cost through partnership distribution or associate drawings perhaps the cost would be tax deductible. Just a thought.

While my children are too old to benefit from such a service, it could be invaluable to lawyers and support staff starting families or with young children."

If you or your firm have any discrimination or harassment concerns, or would like to discuss any respectful workplace issues, please contact me confidentially:

- in Winnipeg at 942-2002,
- or toll free from anywhere in Manitoba at 1-866-771-2002,
- by mail at P.O Box 2555-Station Main, Winnipeg, R3C 4B3,
- by e-mail at brenleecarrington@shaw.ca
- or by fax at 474-1161.

Remember, all services are strictly confidential and are provided free of charge.

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Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Non-Practising:
July 1, 2004 Mary A. Goska
July 1, 2004 George Tacik
July 8,2004 Bryan R. Gray

Practising to Inactive:
April 1, 2004 Conrad L. Wyrzykowski
June 1, 2004 Delbert F. Plett, Q.C.
June 1, 2004 Dana R. Kochan
June 19, 2004 Timothy W.J. Morrison
July 1, 2004 Andrea C. Dodgson
July 1, 2004 David D. Friesen, Q.C.

July 1, 2004 Paul H. Bromley
July 1, 2004 I. Ray Johnston
July 1, 2004 Adrian P. Denegar
July 1, 2004 Louise H. Lien

Non-Practising to Practising:
June 1, 2004 Robert K. Bunn

Inactive to Practising:
June 1, 2004 Patricia L. Carlson
June 10, 2004 Adrian Denegar
June 14, 2004 Sasha R. Paul

Transfer from Another Province:
The following people were called to the Bar of Manitoba and are now entitled to practise law in this jurisdiction, having fulfilled the requirements of Rule 5-14.

July 6, 2004 Bryan D. Hyman, The Law Society of Alberta
July 6, 2004 Debra L. Parkes, The Law Society of Upper Canada
July 6, 2004 M. Michelle Gallant, The Law Society of Nova Scotia

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Legal Services Retail Sales Tax

Tana Christianson
Director of Insurance

By the time you read this, you are probably grudgingly preparing your first remittance to the Manitoba Department of Finance Taxation Division of Retail Sales Tax you've collected on your legal fees. If that is the case, go on and read Allan's Marathon results column. If you have no idea what I'm talking about, then proceed directly to the Manitoba Finance Taxation Division's website (www.gov.mb.ca/finance/taxation) and download Retail Sales Tax Bulletin No. 056, June, 2004 titled "Legal Services" or call the Manitoba Finance Department directly (Winnipeg 945-5603, Manitoba toll-free 1-800-782-0318).

The Manitoba Provincial Government's April, 2004 Budget introduced changes to Retail Sales Tax (RST) affecting legal, accounting, engineering, architectural, security and investigation services. Effective July 1, 2004, RST of 7% must be collected on fees billed for legal services, with a few exemptions. (Consult Bulletin No. 056 for a list of exempt legal services and a list of services which are deemed exempt as falling outside "the practice of law"). Disbursements, if itemized separately, are exempt. Payments must be made quarterly, with the first quarterly return due October 20, 2004. Firms may also elect to remit monthly.

All law firms and sole practitioners providing legal services for fees are required to register for RST purposes. Registration forms are available on the Finance website or by calling the offices previously noted. If you are involved in a transaction with a lawyer from another province and

that lawyer is providing services that relate to Manitoba (for instance, a Court proceeding in Manitoba, or a transaction relating to real or personal property that will be delivered or used in Manitoba), then that non-Manitoba lawyer should be registering and remitting RST to Manitoba Finance as well. Be sure to tell that non-Manitoba lawyer the good news!

The Professional Liability Claims Fund of the Law Society anticipates that it will be paying $25,000.00 per year in RST on legal fees billed to the Fund by defence counsel, just a small portion of the $17.2 Million revenue projected in the budget from all of the professional services now subject to RST.

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Fast Lawyers

Allan Fineblit, Q.C.
Chief Executive Officer

Every year I look in the newspaper to see how many lawyers I can spot running for a good cause in the Manitoba marathon. Every year it seems the print gets smaller and I miss more and more of your names. Here are the names I spotted this year. Let me know who I missed.

It was hard to miss Leilani Kagan's amazing 3:30:09 time for the full marathon. Other full marathoners I spotted were Gary Goodwin, Judge John Guy, Jordan Lee-Wing and Arthur Chapman.

Grant Mitchell set the pace for the half marathoners, followed closely by Karen Jarema Cornejo. Other fast half marathoners were Andrew Swan, Joel Remis, Judge John Combs, Judge Glen Joyal, Charles Sherbo, Marty Minuk, Anita Wortzman, Wayne Onchulenko, Greg Hawrysh, Allan Foran, Allan Finkel, Judge Richard Chartier, Vic Janzen, Tracey Epp and Pat Lane. Congrats to all!

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Many Thanks

The Complaints Investigation Committee wishes to express its sincere thanks to members of the profession who volunteered their time to conduct Practice Reviews and to prepare the necessary reports for the Committee's consideration. The Committee recognizes that the practice of law is demanding and appreciates the invaluable contribution of these practitioners' time.

Chapter 15 of the Code of Professional Conduct states that: "The lawyer should assist in maintaining the integrity of the profession and should participate in its activities." The Committee's volunteers have done just that! Many thanks to David Perlov, Sharon Kravetsky, Robert Tyler, Rocky Kravetsky, Jeff Harris, Herb Suderman, Douglas Bedford, Tim Killeen and Ted Crane.

The Society of Manitoba also wishes to thank the following members who have been involved in fee arbitrations as a member of a Legal Fees Advisory Committee within the past year:

A. Lori Douglas
Brian Midwinter, Q.C.
David King
Diane Stevenson
Donald Brock
Douglas Bedford
Douglas Johnston
Elliott Goszer
Gary Brawn
Howard Tennenhouse
Jacob Janzen
Jay Prober
Joelle Robinson
Judith Blair
Kelly Dickson
Lawrence Donald
Len Fishman
Marianne Rivoalen
Melanie Lautt
Norman Sims, Q.C.
Norman Yusim
Raymond Flett, Q.C.
Richard Handlon
Sandra Kliman
Saul Simmonds
Steve Vincent
Wayne Jackiew
William Johnston

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Notice of Benchers Meetings

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Friday, September 10, 2004 at 2:00 p.m. at the Elk Horn Resort in Clear Lake, Manitoba**. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

The following are the Benchers meetings which have been scheduled for the coming year: September 10, 2004; October 28, 2004; December 16, 2004; February 3, 2005; March 24, 2005; May 12, 2005; June 23, 2005.

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Read it and Weep

Annual Report Now Available

Allan Fineblit, Q.C.
Chief Executive Officer

The Law Society of Manitoba's Annual Report is one of the least read documents we produce. It was, for that reason, the first document we stopped producing in print form. We now rely on our website to distribute the Annual Report (although if someone wants it on paper, we will happily print off a copy for them).

It's a pity really. Annual reports contain a lot of hidden gems. The 2003/2004 Annual Report is now up on our website and has 23 pages jam-packed with useful facts and figures. When I re-

read it for the 14th time in order to thwart eagle-eyed proof-readers like Doug Steinburg, I thought I spotted a typo on page 6 where we list the number of practising lawyers on December 31st of each year. The list said that there were 603 practising lawyers in 1932 but only 551 eighteen years later in 1950.

I pulled out the Annual Reports for those 18 years. I learned that the decline in the number of practising lawyers was no typo. Now Communiqué readers are a pretty sophisticated bunch and I suspect several of you have already figured it out. The devastating depression of the 1930s put many lawyers out of business and the depression was followed by World War II where many of our colleagues went to war, giving up their practices and in many cases, their lives. During the war years, while many left practice, there were very few entering law school to replace them.

The 2003/2004 Annual Report shows us as a thriving bar of almost 1,800 practising lawyers. We don't take enough opportunities to count our blessings. Almost none of you practised during the depression and while there are still a number of our colleagues who are World War II veterans still in practice, the vast majority of us never had to go to war or experience devastating economic disaster like the great depression. It doesn't hurt once in a while to reflect on how lucky we truly are. If you have a few minutes, read the Annual Report and consider that in the context of those lost colleagues of the 1930s and 1940s, most of us have a great deal to be thankful for.

Click here to read the 2004 Annual Report

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Outstanding Interest on Client Accounts

Pursuant to Rule 5-57 of the Rules of the Law Society of Manitoba, a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the Income Tax Act (Canada) on the date the bill is delivered. The interest rate effective for the period July 1, 2004 to September 30, 2004 is 6%.

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